IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.497 OF 2001
IN
SESSIONS CASE NO.430 OF 2000

Bajirao @ Ramesh Suresh Kodre ..Appellant
(Orig.Accused)

Vs.

State of Maharashtra,
Hadapear Police Station ..Respondent
(Orig.Complainant)

Smt.Pranali P.Kakade for the appellant

Mr.A.S.Gadkari, A.P.P. for the state

CORAM : J.N.PATEL &
SMT.ROSHAN S.DALVI, JJ.

DATED : 29TH JUNE, 2006

ORAL JUDGMENT (PER J.N.PATEL, J):

1. The appellant accused was tried on a charge of having committed murder of one Raju @ Chandrashekhar Purushottam Kodre on the night between 18.6.2000 to 19.6.2000 in the agriculture field of one Narsinh Tupe near 17/2 Nali Mundhwa

Road, Pune and thereby committed offence under section 302 of the Indian Penal Code.

2. The learned, 4th Adhoc Additional Sessions Judge, Pune by Judgment and Order dt.8.6.2001 found the appellant accused guilty of having committed offence under section 302 of the Indian Penal Code and convicted him for the same and sentenced to undergo imprisonment for life and to pay fine of Rs.1000/- which is the subject matter of challenge in this appeal.

3. It is the prosecution's case that the appellant accused and deceased were friends but they developed hostility due to certain monetary transaction and the appellant accused suspected the deceased as the person who was responsible for leaking out the clandestine love affair of the accused with Sarita Jadhav and because of the illicit relationship Sarita Jadhav got pregnant and was required to undergo abortion.

4. It is the prosecution's case that on the fateful day of the incident, the appellant accused

and the deceased, Raju @ Chandrashekhar Purushottam Kodre were last seen together and thereafter the dead body of the accused was found in the field of the said Mr.Narsingh Tupe, having a bleeding injury from his head and body was lying near a pool of blood and his scooter parked at the spot near the dead body.

5. On noticing this, Prakash Baburao Tupe, P.W. No.14 rushed to Hadapsar Police Chowky and informed this fact to the police. Then he came to the spot with police personnel. It is the case of the prosecution that P.S.I. Satav informed this fact to P.I.Shirish Arjunrao Shinde, P.W.No.16. He then went to the spot alongwith his staff by then the mob has gathered at the spot. Ravindra P.Kodre P.W.No.5, the brother of the deceased identified the dead body. Therefore, P.I. Shirish A.Shinde recorded his statement and treated it as an F.I.R. with instructions to P.S.I.Khandagale to record the spot panchnama whereas P.S.I. Satav to record the inquest panchnama of the dead body. The clothes and articles of the dead body came to be seized. The dead body was sent for post mortem examination

and the articles were sent to the forensic science laboratory. In the course of investigation, the police recorded the statement of friends and associates of the appellant accused.

6. After arrest of the appellant accused, the police was able to discover the stone (Article 'A') at his instance which was stained with blood in the presence of the panchas. This was also referred to the Medical Officer as well as the forensic science laboratories for examination. On conclusion of investigation, charge sheet came to be filed in the court of J.M.F.C.Cantonment, Pune.

7. The appellant accused pleaded not guilty to the charge and claimed to be tried. He further pleaded that he is totally ignorant of the incident and that nothing has happened before him.

8. The prosecution in order to prove its case which is mainly based on circumstantial evidence has examined witnesses on the point of motive, of last seen together and the recovery of stone in addition to tendering of medical and forensic

evidence.

9. The trial court on conclusion of trial found that the prosecution has proved its case against the appellant accused and held him guilty of committing murder of the deceased.

10. In so far as the fact that the death of Raju @ Chandrasheknar Purushottam Kodre was homicide is not much disputed by the appellant accused, the prosecution has examined Dr.Shrikant Suresh Chandekar, P.W.No.13 who conducted post mortem examination of dead body of Chandrashekar @ Raju Purshottam Kodre at mortury and found the following external injuries:

> (a)(1) Abrasion over right supra scapular region laterly with size 0.5 x 1 cm, 1 x 1 cm, 02 x 1.5 cm, 1 x 3 cm, 05 x 05 cm in an area 3 x 8 cm.
>
> (2) Abrasion Rt Index finder proximal Phalanx Dorsall with size :- 0.5 x 0.8 cm

(3) Abrasion over Lt hand posto laterally at base of thumb with size :- 0.5 x 0.5 cm.

(4) Abrasion Rt. Shin, middle third medially with size:- 0.5 x 0.5 cm.

(5) Abrasion left leg lower third medially 0.5 x 0.5 cm.

(6) Abrasion over Rt leg upper third laterally with size 0.5 x 1 cm.

(7) Abrasion Rt. external ear and preaurioular area with size 7 x 5 cm with contusion.

(8) Abrasion Lt fore head mid. with size 0.5 x 0.5 cm.

(9) Abrasion Rt hand Dorsum proximally linear vertical oblique with size 3 cm.

All abrasions are red.

(b)(1) He also observed contusions over left arm middle region laterally with size 4 x 10 to 12 cm.

(2) Contusion of Lt cheek with size 2.5 x 3 cm. & 2 x 3 cm. Reddish blue.

(c)(1) He has also observed lacerated wounds over Rt index finder proximal interphalangeal joint, dorsaly with size 0.5 x 1 cm. underline cartilage exposed and fractured.

(2) Lacerated wound of Rt parietal region starting anteri 8.5 cm above right ear back going in slightly curved manner, parallel to saggital plane measuring 05 to 1.5 cm x 6 cm. bone deep, skin deep laceration extending down words from posterior end with size 0.2 x 1 cm.

(3) Lacerated wound from anterior end of above mentioned injury vertically downwards with size 0.6 x 1 cm. muscle deep.

(4) Laceration right parieto temporal junctional region 5 cm. above right ear top with size 0.5 x 0.8 cm muscle deep.

(5) Mandibular body was fractured irregularly vertically on Rt. side total thickness in second molar canine region corresponding mucosa lacerated surrounding tissue contused.

11. According to Dr.Chandekar, P.W.No.13, all the above referred injuries were ante mortem and recent. On internal examination of head he noted the following injuries:

(1) Hematoma over Lt. laterally with size 10 x 15 cm x 20 cm.

(2) Hematoma Rt. fronto parietal temporal with size 15 x 10 cm. Rt. Temporalis muscle contused.

(3) Outer table showed depressed fracture

at Rt. Parctal prominence with size 0.5 x 0.5 cm.

(4) Rt. Temporal bone posterior part and adjacent parietal bone sowed depressed fracture with size 5 x 4 cm.

(5) Crack fracture across base - Rt. temporal - Rt mid base - pituitory fossa - Lt. anterior base (hinge fracture)

(6) Dura was lacerated underline depressed fracture

(7) Subdural and subarachnoid heamorrage all over, prominently over left half.

(8) Brain was contused at places and lacerated at Rt. Tempo parietal lobes. Cut section liquifing due to autolysis. During examination of abdomen, he found that semi digested material yellowish with rice particles present in stomach.

12. Dr. Chandekar preserved the viscera and blood for grouping which were forwarded to forensic science laboratory. In his opinion, the probable cause of death is due to head injury and accordingly he has recorded it in the P.M.report which is at Ex.34. In the opinion of Dr.Chandekar, external injuries as mentioned in column No.17 which are on face and head are corresponding with internal injuries as mentioned in column No.19. The injuries to the head in ordinary course are sufficient to cause death of the patient. The doctor has further deposed to the effect that the injuries observed in column no.17 of P.M. to the hands and legs are possible after head injury and the patient is struggling hard for survival by coming in contact with hard barren surface. He has also stated that the hinge fracture injury as noted in para no.19 of P.M. is possible if hard blunt heavy object causes impact on right surface of head and face while the left aspect of head and face is in contact with some hard surface such as stone. Stone Article "A" was referred to Doctor. He gave the opinion that the injuries to the face and head as noted in his P.M.Ex.34 are possible by such

object.

13. Though the defence has thoroughly cross-examined the Medical Officer, Dr.Chandekar, P.W.No.13, nothing could be brought on record to show that the opinion of the Medical Officer as regards the cause of death and the injuries found on the dead body are possible by stone Article 'A' could be destroyed.

14. We may further refer to the C.A. report dt.16.9.00 Ex.No.13/1 in respect of viscera and blood of deceased which was forwarded by the Medical Officer to the Forensic Science Laboratory. The record of analysis clearly go to show that the viscera contain ethyl alcohol but it appears that the blood group of the deceased could not be determined as the results are inconclusive as per the report dt.12.10.2000 Exh.No.13/2/1.

15. The learned counsel for the appellant submitted that though the victims death was a homicidal, there is no evidence of direct nature brought on record by the prosecution to show that

the deceased was driven to death by the appellant accused. It is submitted that the prosecution has not been able to establish that it was the appellant accused who was last seen together with the deceased as there is sufficient time gap during the period the victim was found in the company of the accused by the witnesses who were none else than their friends and the time when he died for want of specific evidence on record. Therefore, it cannot be said that it is the appellant accused who has committed murder as nobody saw them at the scene of offence.

16. The learned counsel for the appellant accused further submitted that the prosecution has failed to establish that the appellant accused had a motive which was strong enough to persuade the appellant accused to commit the murder of the victim who was his friend. In so far as evidence of discovery of the stone (article 'A') under section 27 of the Evidence Act is concerned, it is foisted on the appellant accused, for the very reason that the prosecution claims to have found the clothes of the appellant accused which he was

wearing at the time of the arrest stained with blood inspite of the fact that the incident has occurred almost 3 days before, that is on the night of 18.6.00 whereas the appellant came to be arrested on 21.6.00 and therefore it is highly improbable that the accused will continue to wear the clothes stained with blood which came to be seized under the panchnama Ex.19 in the presence of P.W.No.3, Nagesh Bhande-Patil and therefore even this evidence as to the discovery of stone appears to be suspicious.

17. As regards the appellant accused and the deceased last seen together is concerned, it is submitted by the learned counsel for the appellant that it is a very weak type of evidence and that alone is not sufficient to establish the charge of murder against the appellant accused and therefore, the appellant accused deserves to be acquitted.

18. The learned A.P.P. submitted that the prosecution has sufficiently established the fact that the appellant accused has a strong motive to do away with his friend i.e. deceased Raju @

Chandrashekhar Purushottam Kodre for the reason that he suspected to have leaked out the information about his affair with Sarita Jadhav and the fact of abortion which has been duly established by examining the witness particularly, P.W.No.1, Gangadhar Lonkar and P.W.No.6, Vijay Kaluram Godre.

19. The learned A.P.P. submitted that the prosecution has also established that the appellant accused and the victim were last seen together going on the scooter of the victim which was driven by the victim and further having established these two important circumstances, the prosecution case also stands corroborated by the fact that it was at the instance of the appellant accused that the stone Article 'A' was concealed near the body which was found stained with blood. According to the learned A.P.P. if all these circumstances are taken into consideration as a whole it is sufficient to conclusively establish that he was killed by the appellant accused.

20. If we go through the evidence of Gangadhar

Lonkar, P.W.No.1, Ravindra Kodre, the brother of deceased i.e. P.W.No.5 and Vijay Kaluram Godre, P.W.No.6, the fact that the appellant accused had an affair with Sarita Jadhav and that their relations also got strained due to monetary transaction between them stands duly established and it has been deposed by these witnesses particularly P.W.No.6 that the appellant accused was annoyed and agitated with the deceased, Raju @ Chandrashekhar Purushottam Kodre as he had leaked out the information about abortion of Sarita Jadhav at his instance.

21. We therefore, find that the prosecution has been able to bring on record sufficient motive against the appellant accused to have done away with the deceased Raju @ Chandrashekhar Purushottam Kodre. The said witnesses have also deposed in respect of the fact that on the day of the incident i.e. 18.6.00, the appellant accused and the deceased had been to the house of P.W.no.1 and they decided to go and see the movie at West End Cinema but they could not get the tickets. They then went to the liquor shop and consumed it which stands

corroborated by C.A.’s report in respect of viscera of deceased (Exhibit ’13’). They again made an attempt to get the tickets but as it was not possible they went towards the prostitute lane whereas Nandu Kodre, P.W.No.12 waited at the Hotel. Thereafter Gangadhar Lonkar, P.W.No.1 and Nandu Kodre, P.W.No.12 went to the field of Nandu Kodre whereas appellant accused and the deceased remained there. According to these witnesses, during the night time, accused again met them and he was in drunken condition. Thereafter Gangadhar Lonkar, accused and Nandu Kodre when to the house of Gangadhar Lonkar on a M-80 vehicle where they got down. During that time, the accused has expressed to them that he has become ’Bhai’ and that he had played the game and we will know on the next day. Then they departed at 10.30 p.m. from the place of Gangadhar Lonkar. Similarly P.W.No.5, Ravindra Kodre, brother of the deceased has also deposed to the effect that the deceased had been to the house at 9.30 p.m. and that one Dhananjay Kodre and his wife had seen the deceased and the accused going on scooter at 9.30 p.m. Similarly P.W.No.6, Vijay Kaluram Godre has deposed to the fact that he has

seen appellant accused and the deceased had left his place together when the whereabouts of the deceased were enquired from this witness by the driver of the deceased.

22. The other witness Bhagirath, P.W.No.8 has also deposed to the effect that on the night of the incident he has seen the accused and the deceased going on a scooter on Mundhwa road from Mundhwa side at about 10.00 p.m. The prosecution has also examined Gangadhar Lonkar, P.W.No.1 on this circumstance of being last seen together. In their cross examination, nothing has been brought on record to show that these witness have falsely implicated the appellant. Therefore in our view, the prosecution has also established the second circumstance of the victim and the appellant accused having seen together on the scooter of the victim at 10.30 p.n. having left the company of witnesses.

23. When this circumstances was put to the appellant accused by the court in his examination under section 313 Cr. P.C. the appellant accused

was not in a position to offer any explanation. This can be considered as an additional link in the chain of circumstance.

24. Now let us examine whether the evidence brought on record in respect of discovery of stone article 'A' under section 27 of the Evidence act has been satisfactorily proved by the prosecution. In our view, we find that the prosecution has been able to establish this fact by the evidence of Jagdish Jagtap, P.W.no.2 who has given a vivid description as to how appellant accused led them to the place and took out a stone from the shrubs which was having blood stains and leaves. The said stone is marked as Article 'A'.

25. We do accept the contention of the learned counsel for the appellant accused that in so far as seizure of clothes of the appellant accused is concerned when he came to be arrested on 21.6.00 may be suspicious because the discovery of stone cannot be doubted for the very reason that the evidence of P.W.No.2 has almost gone unchallenged. P.W.No.2 has deposed that on 21.6.00 at about 2.30

p.m. he was called at the police station and at the instance of the appellant accused they had been to Magar Patta from Hadapsar road in a police vehicle and from there to 17 1/2 Nali Road and after crossing two bridges took them to the barren field and from there showed the place. One one side of the rivulete, accused stopped near the heap of shrubs and took out one stone from that place which was packed and sealed by the police. This witness has identified the appellant as well as stone article 'A' in the court. Therefore, considering the evidence on record, we have no hesitation to hold that the appellant accused had a strong motive to commit the offence. Further the appellant accused was found in the company of the deceased, Raju @ Chandrashekhar Purushottam Kodre going towards Nali road where subsequently the dead body of the deceased was found crushed by the stone almost at midnight. He had sufficient opportunity to commit the crime and failure on the part of the appellant accused to offer any explanation as regards this circumstance of having last seen together, additional link in the chain of circumstance completes the chain of circumstance so

as to exclude the possibility of another person having committed murder of the deceased.

26. Therefore, taking into consideration the evidence led by the prosecution, we find that the trial court was justified in arriving at a conclusion that this appellant accused has committed murder of the deceased. Therefore we do not find any reason to interfere with the finding of the trial court and dismiss the appeal.

J.N.PATEL, J

SMT.ROSHAN S.DALVI, J